



General Assembly

Substitute Bill No. 5516

February Session, 2002

***AN ACT CONCERNING ALTERNATIVES TO INCARCERATION FOR
PERSONS WITH PSYCHIATRIC DISABILITIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 54-56d of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2002*):

4 (d) If the court finds that the request for an examination is justified
5 and that, in accordance with procedures established by the judges of
6 the Superior Court, there is probable cause to believe that the
7 defendant has committed the crime for which he is charged, the court
8 shall order an examination of the defendant as to his competency. The
9 court either may appoint one or more physicians specializing in
10 psychiatry to examine the defendant or it may order the Commissioner
11 of Mental Health and Addiction Services to conduct the examination
12 either by a clinical team consisting of a physician specializing in
13 psychiatry, a clinical psychologist and one of the following: A clinical
14 social worker licensed pursuant to chapter 383b or a psychiatric nurse
15 clinical specialist holding a master's degree in nursing, or by one or
16 more physicians specializing in psychiatry, except that no employee of
17 the Department of Mental Health and Addiction Services who has
18 served as a member of a clinical team in the course of such
19 employment for at least five years prior to October 1, 1995, shall be
20 precluded from being appointed as a member of a clinical team. If the

21 Commissioner of Mental Health and Addiction Services is ordered to
22 conduct the examination, he shall select the members of the clinical
23 team or the physician or physicians. If the examiners determine that
24 the defendant is not competent, they shall then determine whether
25 there is substantial probability that the defendant, if provided with a
26 course of treatment, will regain competency within the maximum
27 period of any placement order under this section, or whether the
28 defendant appears to be eligible for a civil commitment, with
29 monitoring by the Court Support Services Division, pursuant to
30 subdivision (2) of subsection (h) of this section, as amended by this act.
31 The court may authorize a physician specializing in psychiatry, a
32 clinical psychologist, a clinical social worker licensed pursuant to
33 chapter 383b or a psychiatric nurse clinical specialist holding a master's
34 degree in nursing selected by the defendant to observe the
35 examination. Counsel for the defendant may observe the examination.
36 The examination shall be completed within fifteen days from the date
37 it was ordered and the examiner or examiners shall prepare and sign,
38 without notarization, a written report and file it with the court within
39 twenty-one business days of the date of the order. On receipt of the
40 written report, the clerk of the court shall cause copies to be delivered
41 immediately to the state's attorney and to counsel for the defendant.

42 Sec. 2. Subsection (h) of section 54-56d of the general statutes is
43 repealed and the following is substituted in lieu thereof (*Effective*
44 *October 1, 2002*):

45 (h) (1) If, at the hearing, the court finds that there is a substantial
46 probability that the defendant, if provided with a course of treatment,
47 will regain competency within the period of any placement order
48 under this section, the court shall either order placement of the
49 defendant for treatment for the purpose of rendering him competent,
50 or proceed pursuant to subdivision (2) of this subsection.

51 (2) (A) If, at the hearing, the court finds that there is a substantial
52 probability that the defendant, if provided with a course of treatment,
53 will regain competency within the period of any placement order

54 under this section, the court may, on its own motion, on a motion by
55 the state, or on a motion by the defendant, order placement of the
56 defendant at a treatment facility pending civil commitment
57 proceedings. The placement shall be in the custody of, and the
58 treatment facility shall be determined by, the Commissioner of Mental
59 Health and Addiction Services, the Commissioner of Children and
60 Families or the Commissioner of Mental Retardation. Such order shall:
61 (i) Include an authorization for the Commissioner of Mental Health
62 and Addiction Services, the Commissioner of Children and Families or
63 the Commissioner of Mental Retardation to apply for a civil
64 commitment of such defendant pursuant to sections 17a-75 to 17a-83,
65 inclusive, as amended, 17a-270 to 17a-283, inclusive, or 17a-495 to 17a-
66 538, inclusive; (ii) permit the defendant to agree to participate
67 voluntarily in a treatment plan devised by the Commissioner of
68 Mental Health and Addiction Services, the Commissioner of Mental
69 Retardation or the Commissioner of Children and Families, and
70 monitored by the Court Support Services Division, and require that the
71 defendant comply with such treatment plan; and (iii) provide that if
72 the application for civil commitment is denied or not pursued by the
73 Commissioner of Mental Health and Addiction Services, the
74 Commissioner of Children and Families or the Commissioner of
75 Mental Retardation, or if, in the case of a defendant who is
76 participating voluntarily in a treatment plan, such defendant ceases
77 such voluntary participation, the person in charge of the treatment
78 facility or a designee shall submit a written progress report to the court
79 pursuant to subsection (j) of this section, and the defendant shall be
80 returned to the court for a hearing pursuant to subsection (k) of this
81 section. The period of placement and monitoring under such order
82 shall not exceed the period of the maximum sentence which the
83 defendant could receive on conviction of the charges against such
84 defendant, or eighteen months, whichever is less. The Court Support
85 Services Division shall monitor the defendant's compliance with the
86 court's order. If the defendant has complied, at the end of the period of
87 placement and monitoring, the court shall approve the entry of a nolle
88 prosequi to the charges against the defendant, or shall dismiss such

89 charges.

90 (B) This subdivision shall not be applicable: (i) To any person
91 charged with a class A felony, a class B felony, except a violation of
92 section 53a-122 that does not involve the use, attempted use or
93 threatened use of physical force against another person, or a violation
94 of section 14-227a, as amended, subdivision (2) of subsection (a) of
95 section 53-21, section 53a-56b, 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71,
96 53a-72a or 53a-72b, (ii) to any person charged with a crime or motor
97 vehicle violation who, as a result of the commission of such crime or
98 motor vehicle violation, causes the death of another person, or (iii)
99 unless good cause is shown, to any person charged with a class C
100 felony.

101 Sec. 3. Subsection (j) of section 54-56d of the general statutes is
102 repealed and the following is substituted in lieu thereof (*Effective*
103 *October 1, 2002*):

104 (j) The person in charge of the treatment facility or his designee shall
105 submit a written progress report to the court (1) at least seven days
106 prior to the date of any hearing on the issue of the defendant's
107 competency; (2) whenever he believes that the defendant has attained
108 competency; [or] (3) whenever he believes that there is not a
109 substantial probability that the defendant will attain competency
110 within the period covered by the placement order; or (4) whenever a
111 defendant has been placed for treatment pursuant to subdivision (2) of
112 subsection (h) of this section, as amended by this act and the
113 application for civil commitment of such defendant is denied or not
114 pursued. The progress report shall contain (A) the clinical findings of
115 the person submitting the report and the facts on which the findings
116 are based; (B) the opinion of the person submitting the report as to
117 whether the defendant has attained competency or as to whether the
118 defendant is making progress, under treatment, toward attaining
119 competency within the period covered by the placement order; and (C)
120 any other information concerning the defendant requested by the
121 court, such as the method of treatment or the type, dosage and effect of

122 any medication the defendant is receiving.

123 Sec. 4. Subsection (m) of section 54-56d of the general statutes is
124 repealed and the following is substituted in lieu thereof (*Effective*
125 *October 1, 2002*):

126 (m) If at any time the court determines that there is not a substantial
127 probability that the defendant will attain competency within the
128 period of treatment allowed by this section, or if at the end of that
129 period the court finds that the defendant is still not competent, the
130 court shall either release the defendant from custody or order the
131 defendant placed in the custody of the Commissioner of Mental Health
132 and Addiction Services, the Commissioner of Children and Families or
133 the Commissioner of Mental Retardation. The commissioner given
134 custody or his designee shall then apply for civil commitment
135 according to sections 17a-75 to 17a-83, inclusive, as amended, 17a-270
136 to 17a-283, inclusive, as amended, and 17a-495 to 17a-528, inclusive.
137 The court shall hear arguments as to whether the defendant should be
138 released or should be placed in the custody of the Commissioner of
139 Mental Health and Addiction Services, the Commissioner of Children
140 and Families or the Commissioner of Mental Retardation. If the court
141 orders the release or placement in the custody of the Commissioner of
142 Mental Health and Addiction Services, the Commissioner of Children
143 and Families or the Commissioner of Mental Retardation of a
144 defendant charged with the commission of a crime that resulted in the
145 death or serious physical injury, as defined in section 53a-3, as
146 amended, of another person, it may, on its own motion or on motion of
147 the prosecuting authority, order, as a condition of such release,
148 periodic examinations of the defendant as to his competency. Such an
149 examination shall be conducted in accordance with subsection (d) of
150 this section, as amended by this act. Upon receipt of the written report
151 as provided in said subsection (d) the court shall, upon the request of
152 either party filed not later than thirty days after the court receives such
153 report, conduct a hearing as provided in subsection (e) of this section.
154 Such hearing shall be held not later than ninety days after the court
155 receives such report. If the court finds that the defendant has attained

156 competency, he shall be returned to the custody of the Commissioner
157 of Correction or released, if he has met the conditions for release, and
158 the court shall continue with the criminal proceedings. Periodic
159 examinations ordered by the court under this subsection shall continue
160 until the court finds that the defendant has attained competency or
161 until the time within which the defendant may be prosecuted for the
162 crime with which he is charged, as provided in section 54-193 or 54-
163 193a, has expired, whichever occurs first. The court shall dismiss, with
164 or without prejudice, any charges for which a nolle prosequi is not
165 entered when the time within which the defendant may be prosecuted
166 for the crime with which he is charged, as provided in section 54-193
167 or 54-193a, has expired. Notwithstanding the erasure provisions of
168 section 54-142a, police and court records and records of any state's
169 attorney pertaining to a charge which is nolle or dismissed without
170 prejudice while the defendant is not competent shall not be erased
171 until the time for the prosecution of the defendant expires under
172 section 54-193 or 54-193a. A defendant who is not civilly committed as
173 a result of an application made by the Commissioner of Mental Health
174 and Addiction Services, the Commissioner of Children and Families or
175 the Commissioner of Mental Retardation pursuant to this section shall
176 be released. A defendant who is civilly committed pursuant to such an
177 application shall be treated in the same manner as any other civilly
178 committed person.

179 Sec. 5. Subsection (n) of section 54-56d of the general statutes is
180 repealed and the following is substituted in lieu thereof (*Effective*
181 *October 1, 2002*):

182 (n) The cost of the examination effected by the Commissioner of
183 Mental Health and Addiction Services and of testimony of persons
184 conducting the examination effected by the commissioner shall be paid
185 by the Department of Mental Health and Addiction Services. The cost
186 of the examination and testimony by physicians appointed by the
187 court shall be paid by the Judicial Department. If the defendant is
188 indigent, the fee of the person selected by the defendant to observe the
189 examination and to testify on his behalf shall be paid by the Public

190 Defender Services Commission. The expense of treating a defendant
191 placed in the custody of the Commissioner of Mental Health and
192 Addiction Services, the Commissioner of Children and Families or the
193 Commissioner of Mental Retardation pursuant to subdivision (2) of
194 subsection (h) or subsection (i) of this section shall be computed and
195 paid for in the same manner as is provided for persons committed by a
196 probate court under the provisions of sections 17b-19, 17b-63 to 17b-65,
197 inclusive, 17b-116 to 17b-138, inclusive, as amended, 17b-220 to 17b-
198 250, inclusive, as amended, 17b-256, as amended, 17b-259, as amended,
199 17b-263, 17b-287, 17b-340 to 17b-350, inclusive, as amended, 17b-689,
200 17b-689b and 17b-743 to 17b-747, inclusive, as amended.

201 Sec. 6. (NEW) (*Effective October 1, 2002*) (a) When used in this
202 section, "eligible defendant" means a person found by the court to have
203 a significant psychiatric disability or a history of treatment for a
204 significant psychiatric disability, and who currently is in need of and
205 would benefit from appropriate and available treatment programs,
206 and "psychiatric disability" means a mental or emotional condition that
207 has substantial adverse effects on the defendant's ability to function
208 and requires the defendant to receive care and treatment, but shall not
209 include an abnormality manifested primarily by repeated criminal or
210 otherwise antisocial conduct.

211 (b) There shall be a pretrial program for alternative placement of
212 eligible defendants accused of a crime or crimes or a motor vehicle
213 violation or violations for which a sentence to a term of imprisonment
214 may be imposed, which crimes or violations are not of a serious
215 nature. Services pursuant to such program may be provided by the
216 Commissioner of Mental Health and Addiction Services, by the
217 Commissioner of Children and Families or through a private provider
218 agreed upon by the state and the eligible defendant.

219 (c) The court may, in its discretion, invoke such program on motion
220 of a state's attorney or prosecuting attorney, or on motion of the
221 defendant, with respect to an eligible defendant (1) who agrees to
222 disclose to the court the existence of any records of any prior cases and

223 any pending cases concerning the eligible defendant that came before
224 the courts of probate regarding such eligible defendant's mental health
225 and the disposition of such cases, and (2) who can demonstrate to the
226 satisfaction of the court the benefits to be gained by invoking such
227 program, provided the eligible defendant shall agree thereto and
228 provided notice has been given by the eligible defendant, on a form
229 approved by the office of the Chief Court Administrator, to the victim
230 or victims of such crime or motor vehicle violation, if any, by
231 registered or certified mail and such victim or victims have an
232 opportunity to be heard thereon. In determining whether to grant an
233 application under this section with respect to a person who has been
234 adjudged a youthful offender under the provisions of sections 54-76b
235 to 54-76n of the general statutes, inclusive, as amended, more than five
236 years prior to the date of such application, and notwithstanding the
237 provisions of section 54-76l of the general statutes, the court shall have
238 access to the youthful offender records of such person and may
239 consider the nature and circumstances of the crime with which such
240 person was charged as a youth.

241 (d) This section shall not be applicable: (1) To any person charged
242 with a class A felony, a class B felony, except a violation of section 53a-
243 122 of the general statutes that does not involve the use, attempted use
244 or threatened use of physical force against another person, or a
245 violation of section 14-227a, as amended, subdivision (2) of subsection
246 (a) of section 53-21 of the general statutes, section 53a-56b, 53a-60d,
247 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b of the general
248 statutes, (2) to any person charged with a crime or motor vehicle
249 violation who, as a result of the commission of such crime or motor
250 vehicle violation, causes the death of another person, or (3) unless
251 good cause is shown, to any person charged with a class C felony.

252 (e) (1) Any eligible defendant who enters such program shall agree
253 to the tolling of any statute of limitations with respect to such crime
254 and to a waiver of the right to a speedy trial. Any such eligible
255 defendant shall appear in court and shall, under such conditions as the
256 court shall order, be released to the custody of the Court Support

257 Services Division. If the eligible defendant refuses to accept, or, having
258 accepted, violates such conditions, the eligible defendant's case shall be
259 brought to trial. The period of such probation or supervision, or both,
260 shall not exceed two years.

261 (2) The court shall order that as a condition of such probation the
262 eligible defendant participate in a treatment plan. The treatment
263 provider shall report every ninety days to the Court Support Services
264 Division regarding the progress of the eligible defendant under the
265 treatment plan, except, in the event of substantial noncompliance with
266 the treatment plan, such report shall be made as soon as reasonably
267 possible. An eligible defendant who participates in such program of
268 alternative placement shall provide written consent for such reports
269 for the duration of such program.

270 (3) The court may order that as a condition of such probation the
271 defendant participate in the zero-tolerance drug supervision program
272 established pursuant to section 53a-39d of the general statutes.

273 (4) If the defendant has reached the age of sixteen years but has not
274 reached the age of eighteen years, the court may order that as a
275 condition of such probation the eligible defendant be referred for
276 services to a youth service bureau established pursuant to section
277 17a-39 of the general statutes, provided the court finds, through an
278 assessment by a youth service bureau or its designee, that the eligible
279 defendant is in need of and likely to benefit from such services.

280 (5) When determining any conditions of probation to order for a
281 person entering such program who was charged with a misdemeanor
282 that did not involve the use, attempted use or threatened use of
283 physical force against another person or a motor vehicle violation, the
284 court shall consider ordering the person to perform community service
285 in the community in which the offense or violation occurred. If the
286 court determines that community service is appropriate, such
287 community service may be implemented by a community court
288 established in accordance with section 51-181c of the general statutes if

289 the offense or violation occurred within the jurisdiction of a
290 community court established by said section.

291 (6) If the eligible defendant is charged with a violation of section
292 46a-58, 53-37a, 53a-181j, 53a-181k or 53a-181l of the general statutes,
293 the court may order that as a condition of such probation the eligible
294 defendant participate in a hate crimes diversion program as provided
295 in subsection (f) of this section.

296 (f) If the court orders the eligible defendant to participate in a hate
297 crimes diversion program as a condition of probation, the eligible
298 defendant shall pay to the court a participation fee of four hundred
299 twenty-five dollars. No person may be excluded from such program
300 for inability to pay such fee, provided (1) such person files with the
301 court an affidavit of indigency or inability to pay, (2) such indigency or
302 inability to pay is confirmed by the Court Support Services Division,
303 and (3) the court enters a finding thereof. The Judicial Department
304 shall contract with service providers, develop standards and oversee
305 appropriate hate crimes diversion programs to meet the requirements
306 of this section. Any eligible defendant whose employment or residence
307 makes it unreasonable to attend a hate crimes diversion program in
308 this state may attend a program in another state which has standards
309 substantially similar to, or higher than, those of this state, subject to the
310 approval of the court and payment of the application and program fees
311 as provided in this section. The hate crimes diversion program shall
312 consist of an educational program and supervised community service.

313 (g) If an eligible defendant released to the custody of the Court
314 Support Services Division satisfactorily completes such eligible
315 defendant's period of probation, such eligible defendant may apply for
316 dismissal of the charges against such eligible defendant and the court,
317 on finding such satisfactory completion, shall dismiss such charges. If
318 the eligible defendant does not apply for dismissal of the charges
319 against such eligible defendant after satisfactorily completing such
320 eligible defendant's period of probation, the court, upon receipt of a
321 report submitted by the Court Support Services Division that the

322 eligible defendant satisfactorily completed such eligible defendant's
 323 period of probation, may on its own motion make a finding of such
 324 satisfactory completion and dismiss such charges. Upon dismissal, all
 325 records of such charges shall be erased pursuant to section 54-142a of
 326 the general statutes. An order of the court denying a motion to dismiss
 327 the charges against an eligible defendant who has completed such
 328 eligible defendant's period of probation or supervision or terminating
 329 the participation of an eligible defendant in such program shall be a
 330 final judgment for purposes of appeal.

331 Sec. 7. Section 17a-681a of the general statutes is repealed and the
 332 following is substituted in lieu thereof (*Effective October 1, 2002*):

333 Prior to the [arraignment] trial of a person charged [solely] with [the
 334 commission of a misdemeanor] a crime other than a class A felony or a
 335 class B felony, except a violation of section 53a-122 that does not
 336 involve the use, attempted use or threatened use of physical force
 337 against another person, the Department of Mental Health and
 338 Addiction Services shall, to the maximum extent possible within the
 339 limits of available appropriations, with the consent of the arrested
 340 person, cause a clinical assessment to be performed of any person who
 341 has previously received mental health services or treatment for
 342 substance abuse from the department or who would reasonably
 343 benefit from such services to determine whether such person should be
 344 referred for community-based mental health services. If the person is
 345 determined to be in need of such services and is willing to accept the
 346 services offered, the court shall be informed of the result of the
 347 assessment and the recommended treatment plan for consideration by
 348 the court in the disposition of the criminal case.

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| This act shall take effect as follows: | |
| Section 1 | <i>October 1, 2002</i> |
| Sec. 2 | <i>October 1, 2002</i> |
| Sec. 3 | <i>October 1, 2002</i> |
| Sec. 4 | <i>October 1, 2002</i> |
| Sec. 5 | <i>October 1, 2002</i> |

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| Sec. 6 | <i>October 1, 2002</i> |
| Sec. 7 | <i>October 1, 2002</i> |

JUD *Joint Favorable Subst.*

HS *Joint Favorable*